



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 3, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert Alan Dahl, Esq.
1100 Connecticut Avenue, NW
Suite 330
Washington, D.C. 20036

RE: MUR 4736
Robert Riley, Jr.

Dear Mr. Dahl:

As part of its consideration of Matter Under Review 4736, the Federal Election Commission ("the Commission") has found reason to believe that Robert Riley, Jr. violated 2 U.S.C. § 441a(a)(1) and § 441f, which are provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which forms the basis for the Commission's findings, is attached for your information.

The facts underlying the Commission's findings in MUR 4736 are virtually identical to the basis for the Commission's June 1998 findings against Robert Riley, Jr. in MURs 4568, 4633 and 4634. Due to the related nature of these MURs, the Commission has decided to investigate MUR 4736 concurrently with its investigation in MURs 4568, 4633 and 4634. Future communications regarding this MUR will refer to MURs 4568, 4633, 4634 and 4736 as being part of a single investigation.

For your information, this Office has considered and will treat Mr. Riley's responses and submissions in MURs 4568, 4633 and 4634 as if they also had been filed in MUR 4736. You also may submit additional factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such additional materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in

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settlement of the matter or recommending that pre-probable cause conciliation not be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Mark Shonkwiler or Marianne Abely at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosure:
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Robert Riley, Jr.

MUR: 4736

I. GENERATION OF THE MATTERS

The respondent was added to MUR 4736, which relates to the involvement of Triad Management Services, Inc. ("Triad") in various 1996 congressional elections, on the basis of information ascertained by the Commission in the normal course of its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

The Commission currently is investigating similar allegations as part of an ongoing investigation in MURs 4568, 4633 and 4634. The Commission determined therefore, that it will investigate MUR 4736 jointly with MURs 4568, 4633 and 4634.

II. FACTUAL AND LEGAL ANALYSIS

During the latter part of 1996 and throughout 1997, there were a number of press accounts concerning the activities of Triad in connection with these federal elections. In summary, it was reported that during both the primary and general elections, Triad came to the aid of a substantial number of Republican congressional campaigns, including the Bob Riley for Congress committee, after learning of their needs through a process it referred to as a "political audit."¹

¹ The respondent, Robert Riley, Jr., is the son of the candidate, Robert R. Riley.

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Triad reportedly communicated the results of its political audits, along with solicitations for contributions to specific campaigns, to wealthy individuals who received periodic "Triad Fax Alerts." It appears that the firm then may have forwarded contributions from these same individuals to different campaign committees. Triad also reportedly set up a plan to arrange contributions from individuals, who already had made the maximum legal contribution to certain congressional candidates, to various political action committees ("PACs"). These PACs reportedly then gave identical or nearly identical amounts back to the original contributor's preferred candidate.

The Commission has found reason to believe that, during the 1996 election cycle, Robert Riley, Jr. may have violated the Federal Election Campaign Act of 1971, as amended ("the Act") by making contributions to the Bob Riley for Congress committee in the name of another person. In the alternative, the Commission has found reason to believe that Robert Riley, Jr. may have made excessive contributions to his father's campaign after directly contributing to certain PACs, because the contributions to those PACs were made with the knowledge that said entities would then contribute a substantial portion of the funds received back to the Bob Riley for Congress committee, to whom the respondent had already made the maximum legal contribution.

A. THE APPLICABLE LAW

The Act provides that no person, including a political committee, may contribute more than \$1,000 per election to any candidate for federal office or his authorized committee. 2 U.S.C. § 441a(a)(1).

The Act also prohibits a contributor from attempting to hide a contribution to a candidate or committee by making the contribution in the name of another person.

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2 U.S.C. § 441f. Specifically, the Act prohibits (1) making a contribution in the name of another; (2) knowingly permitting one's name to be used to effect such a contribution; and (3) knowingly accepting such a contribution. *Id.* In addition, no person may knowingly help or assist any person in making a contribution in the name of another.

2 U.S.C. § 441f, 11 C.F.R. § 110.4(b)(1)(iii).

11 C.F.R. § 110.1(h), entitled "*Contributions to committees supporting the same candidate*," provides that:

A person may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting the same candidate in the same election, as long as -

(1) The political committee is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee;

(2) The contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election; and

(3) The contributor does not retain control over the funds.

B. FACTS

1. Triad

Triad appears to have been created during the 1996 election cycle. Triad reportedly was founded by Carolyn Malenick, who previously had worked as a fundraiser for various political groups and campaigns, including, *inter alia*, Oliver North's 1994 bid for the US Senate. At different times, Ms. Malenick reportedly has described

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herself as the President and Chief Executive Officer of Triad; the Director of Triad; and the Chief Operating Officer of Triad. *See, e.g.,* 11/19/97 Carolyn Malenick letter-to-the-editor of the Dayton Daily News.

Triad advertises itself as a political consulting firm that provides services to donors interested in making political contributions to conservative candidates, campaigns, issues and projects. Triad attempts to distinguish itself from other political consulting firms by claiming that it only works for donors, not for candidates or campaigns.

Press accounts indicate that Triad representatives have described the company as operating in a manner akin to a stock brokerage for conservative political donors, providing research and analysis of upcoming elections, and dispensing advice on how to maximize the impact of political contributions. *See* 9/28/96 National Journal article. In sum, Triad reportedly seeks to give wealthy contributors advice on how to get the "biggest bang for the buck" with their contributions by telling them which conservative candidates look like winners and which ones need help. *Id.*

2. Triad Fundraising Efforts

At least one news account has reported that Triad personnel and consultants performed what Triad labeled as "political audits" on approximately 250 campaigns during the 1996 election cycle. *See* 10/29/97 Minneapolis Star-Tribune article. This news account also reported that a Triad spokesperson described the purpose of these political audits, many of which reportedly included meetings with the candidate or senior campaign officials, as the identification of "races where donors could support candidates who shared their ideological views and had a viable campaign." *Id.*

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The Triad political audit reports released as exhibits to the Final Report on Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns by the Senate Committee on Governmental Affairs ("Senate Report") refer to what appears to have been a practice Triad had of soliciting donors who already had made the maximum legal contribution to particular candidates Triad was seeking to support. It has been alleged, and some of the audit reports seem to indicate, that Triad may have tried to interest such donors in making contributions to certain selected political action committees ("PACs"), which made subsequent, and often identical, contributions to the original donor's preferred candidate(s).²

For example, an excerpt from the Triad audit report of the campaign of Pete Sessions, which is attached to the Senate Minority report, states: "Both Sessions and [the campaign manager] clearly understand the Triad concept and will have a list of their maxed out donors for our inspection as soon as there is a call from Washington." See excerpt from Pete Sessions audit report. Another audit report states that "Ed Merritt has a number of maxed out donors who might want to be introduced to Triad. Towards that end, I have recommended over the telephone to [a Triad employee] that we check out their receptance." See Ed Merritt audit report. In what appears to be a reference to the same practice, the Triad audit report on the Sam Brownback for US Senate campaign,

² It has been reported that Ms. Malenick acknowledged that Triad would try and match donors referred to it by a candidate to PACs who were likely to support the same candidate, but denied that there was any coordination between the individual contribution to the PACs and the PAC contributions to the candidate. See October 8, 1997 Article in The Hill. Triad's advertisements seem to hint at this by stating that its "services to clients" include "[w]orking with conservative political action committees and issue organizations for efforts to maximize their separate funding sources to accomplish common objectives."

notes that Triad will "[n]eed to work with potential clients that may be recommended by the Brownback campaign and with the finance chairman to ensure that Triad is properly advertised." *See* Brownback audit report.

In this context, the complaint in MUR 4633 alleges that Robert Riley, Jr., the son of Congressman Bob Riley, who had made the maximum legal contribution to his father's campaign, used Triad's services to make \$5000 in contributions to five PACs, which within a few weeks, and in some cases a few days, made identical or nearly identical contributions to the Riley Committee. These contributions are summarized below:

Name of PAC	Date of Contribution by Riley, Jr.	Amount of Contribution by Riley, Jr.	Date of PAC Contribution to Campaign	Amount of PAC Contribution to Campaign
Conservative Campaign Fund	5/09/96	\$1000	5/29/96	\$1000
American Free Enterprise	5/13/96	\$1000	5/23/96	\$1000
Citizens Allied for Free Enterprise	5/22/96	\$1000	5/24/96	\$1000
Faith, Family & Freedom	5/23/96	\$1000	5/24/96	\$500
Eagle Forum	7/12/96	\$1000	6/16/96 7/29/96 9/11/96	\$1000 \$500 \$500

³ The reported date of the contribution is based on the date of receipt reported by the PACs. The Commission has other information which suggests that Robert Riley, Jr. wrote the checks for all five contributions on May 9, 1996 and that Triad forwarded the five checks to the different PACs with cover letters dated May 10, 1996.

C. LEGAL ANALYSIS

Given the allegations and information in each complaint, response, and additional information from public sources, the Commission has made findings against Robert Riley, Jr. under two alternative theories. Under the first theory, the information available raises questions as to whether some or all of these contributions, when funneled through a Triad-selected PAC, may constitute contributions made in the name of another person (the PACs) in violation of 2 U.S.C. § 441f. Alternatively, the contributions made through the PACs by the individual donors may constitute excessive contributions made in violation of 2 U.S.C. § 441a(a)(1), because the contribution was made with the knowledge that a substantial portion of the contributions would be subsequently contributed to a particular candidate to whom the original donor already had contributed. 11 C.F.R. §110.1(h).

Some of the reasons for believing that the PAC contributions by Robert Riley, Jr. may have constituted contributions in the name of another person can be summarized as follows. As noted above, documents attached as exhibits to the Senate report appear to indicate that Triad had a practice of asking campaigns that Triad decided to support for lists of their "maxed out" donors. At this time, there is no other explanation for the proximity in timing and similarity in amounts between the contributions to the PACs and the subsequent PAC contributions to the Riley Committee. In addition, Robert Riley, Jr. had no prior history of contributing to the PACs involved in this alleged scheme, and all of the PACs that received his contributions and subsequently contributed to the Riley Committee. Further, while the PACs could have contributed up to \$5000 to

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Congressman Riley's campaign, each of their contributions were very similar in amount to the \$1000 contributions that Robert Riley, Jr. made to the PACs.

In MUR 4633, the respondent submitted a response which denied the allegation that his funds had been funneled through the PACs to the Bob Riley for Congress Committee. Notwithstanding these conclusory denials, the Commission believes that there are substantial unanswered questions regarding the subject contributions.

It appears, however, that Triad had communications with both the contributor (Robert Riley, Jr.) and with the Triad-recommended PACs to which he contributed. These communications would have created an opportunity for the PACs to have agreed to make a contribution to a Triad-recommended candidate (Congressman Riley) in an amount identical to, or nearly identical to, the contributions that they received from a Triad client (i.e., Robert Riley, Jr.).⁴

The factors outlined above caused the Commission to find reason to believe that Robert Riley, Jr. violated the Act by making contributions in the name of another person (the PACs) in violation of 2 U.S.C. § 441f. In the alternative, the Commission has found reason to believe that Robert Riley, Jr. violated 2 U.S.C. § 441a(a)(1) by making excessive indirect contributions to the Bob Riley for Congress after directly making the maximum legal contribution, because the contributions to those PACs may have been made with the knowledge that those entities would contribute a substantial portion of those funds to the Bob Riley for Congress committee. 11 C.F.R. § 110.1(h)

⁴ The fact that all of the PACs involved in the communications subsequently did make identical, or nearly identical, contributions to the Triad-recommended political committees raises further questions about whether there was an agreement to make contributions in the name of another person.